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MICHAEL RODAK, JR.

In the Supreme Court of the United States

October Term, 1972

No. 72-1010

OHIO MUNICIPAL JUDGES ASSOCIATION
and ROBERT F. NICCUM,
Appellants,

vs.

ARTHUR DAVIS, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

PETITION FOR REHEARING

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1. This Court on March 26, 1973 rendered its judgment on an appeal from the United States District Court for the Northern District of Ohio.

2. The judgment of the District Court was affirmed, but, as stated in this Court's judgment, upon grounds other than those upon which the lower court's holding was based.

3. No exposition nor statement appeared in this Court's judgment as to the other grounds upon which its judgment was based.

4. Appellants are placed, therefore, in a most disadvantageous position in formulating this Petition for Rehearing and are compelled to assume from the facts brought to the attention of this Court that a legislative body does no violence to the Fourteenth Amendment to the Constitution of the United States when it classifies any single segment of the judiciary and such classification bears no reasonable, rational basis.

5. Appellants have never proposed that the various levels of a judicial system of a State or of the United States may not be classified and that such classifications may result in variations in compensation, working conditions and a myriad of other differences. It has been appellant's contention, however, that while there may be classifications of various levels of judicial offices when logic, reason, common sense, public policy or any rationale are present, no such classifications are permissible in the absence of such elements and the classification is invidious and arbitrary.

6. The invidiousness of the classification involved in this case now becomes more apparent since the judgment of this Court and gives rise to extremely serious and substantial matters of law affecting the orderly process of judicial administration in every State in the United States, and perhaps in the judicial system of the United States as well.

7. The inescapable logical conclusion and interpretation of this Court's judgment indicates, for example, that a legislative body may arbitrarily discriminate against the judges of the supreme court of a State and thereby threaten the independence of such a court as well as tend to destroy the traditional separation of powers of government typical of all States of the United States.

8. In this particular case it is the judges of municipal courts who suffer from discriminatory legislation, tomorrow it is now possible for a legislative body to select another branch of the judiciary on which to impose sanctions of one kind or another. The most likely judicial branch for such treatment in any state would be the supreme court of the state.

CONCLUSION

Appellants implore this Court to grant this Petition for Rehearing not only for the benefit of the parties herein, but to avoid implications inherent in the Court's per curiam opinion which will, appellants believe, open the door to legislative mischief directed not only toward judicial offices, but all governmental offices. Judges and all public servants are entitled to "equal protection of the laws", no more and no less than any other citizen. We ask for no more and no less.

Respectfully submitted,

JONATHAN S. ROCKER
JACK M. SCHULMAN
Counsel for Appellants

CERTIFICATE OF COUNSEL

I, Jonathan S. Rocker, one of the counsel for appellants do hereby certify that the within Petition for Rehearing is presented in good faith and not for the purpose of delay.

JONATHAN S. ROCKER
Member of the Bar of the United States Supreme Court